

**6301.4 Ex parte communications.**

Ex parte communications, that is, written or oral communications with the Board by or for one party only without notice to the other, are not permitted. No member of the Board or of the Board's staff shall consider, nor shall any person directly or indirectly involved in an appeal submit to the Board or to the Board's staff, off-the-record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation between Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

**6301.5 Contract appeals procedures (general).**

(a) It is the intent of these rules to provide for the just and inexpensive determination of appeals without unnecessary delay. It is the objective of the Board's preliminary procedures to encourage full disclosure of relevant and material facts, and to discourage surprise. Each specified time limitation is a maximum, and should not be fully used if the action described can be accomplished in a shorter period. The Board may extend any time limitation for good cause and in accordance with legal precedent.

(b) Ordinarily, the appellant has the burden of proof.

(c) The rules of procedure at 6302 shall govern the procedures in all contract disputes appealed to the Board.

**6301.6 Effective date.**

This chapter shall apply to all appeals relating to contracts entered into on or after March 1, 1979, and upon the contractor's election of Contract Disputes Act procedures, to appeals relating to earlier contracts with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

**PART 6302—RULES OF PROCEDURE**

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6302.35 Dismissal without prejudice (Rule 35).

6302.36 Dismissal for failure to prosecute or defend (Rule 36).

6302.37 Sanctions (Rule 37).

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AUTHORITY: Contract Disputes Act of 1978 (41 U.S.C. 600, *et seq.*).

SOURCE: 52 FR 48631, Dec. 23, 1987, unless otherwise noted.

**6302.1 How to appeal a contracting officer's decision (Rule 1).**

(a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy of the notice shall be furnished to the

contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of \$50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a) of this section citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a claim in excess of \$50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure to issue a decision.

(d) Upon docketing of appeals filed pursuant to paragraph (b) or (c) of this section, the Board, at its option, may stay further proceedings pending issuance of a final decision by the contracting officer within the time fixed by the Board or order the appeal to proceed without the contracting officer's decision.

#### **6302.2 Contents of notice of appeal (Rule 2).**

A notice of appeal must indicate that an appeal is intended and identify the contract number, the administration, bureau, or office concerned with the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal shall be signed by the appellant, or by an officer of an appellant corporation or member of an appellant firm, or by an appellant's authorized representative or attorney.

#### **6302.3 Docketing of appeals (Rule 3).**

Following receipt by the Board of the original notice of appeal, the appellant and the contracting officer are promptly notified of its receipt and docketing by the Board, and the Board furnishes a copy of these rules to the appellant.

#### **6302.4 Preparation, contents, organization, forwarding, and status of appeal file (Rule 4).**

(a) *Duties of contracting officer.* Within 30 days after receipt of notice that an

appeal has been docketed, the contracting officer shall assemble and transmit to the Board, with a copy to the appellant and the Government attorney, an appeal file consisting of all documents pertinent of the appeal, including:

(1) The contracting officer's decision and finding of fact from which the appeal is taken;

(2) The contract, including pertinent specifications, modifications, plans, and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant may supplement the file by transmitting to the Board any additional documents which it considers pertinent to the appeal and shall furnish two copies of such documents to the Government attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file. The contracting officer's final decision and the contract shall be conveniently placed in the file for ready reference.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, the other party shall be notified that the document or a copy is available for inspection at the offices of the Board or of the party filing the document.